

## **REMARKS**

In the Office action mailed March 22, 2007, claims 1-42 were rejected. Pursuant to this reply, claims 1, 4-9, 15-23, 29 and 36 have been amended. Withdrawal of the rejections and reconsideration and allowance of claims 1-42 are respectfully requested in view of the following remarks.

### **Rejection Under 35 U.S.C. § 112**

Claims 4-9 and 18-23 were rejected under 35 U.S.C. 112, first paragraph, for failing to comply with the enablement requirement. This rejection is respectfully traversed.

The Office action asserts that the specification lacks support for “product date code” (claims 9 and 23), “equivalent product” (claims 8 and 22), and other attributes. It is respectfully submitted that this assertion is in error. Claims 4 and 18 have been amended to recite that an incentive program is identified based at least in part on a stored product characteristic associated with the purchased product. As recited in the other claims, this characteristic may be a product category (claims 5 and 19), a product name (claims 6 and 20), a product family (claims 7 and 21), an identification of an equivalent product (claims 8 and 22) or a product date code (claims 9 and 23). Support for these characteristics may be found in the application as originally filed. For instance, page 9, lines 5-9, state that “[t]he matching between product 504 and incentive program 514 may be done through the product characteristics described in category 506, product family 508, and equivalence class 510.” Another example is provided at pages 10-11, which describe the process by which an incentive program is determined based on one or more of manufacturer identity, product category, product family, equivalence class, or other characteristics which may be associated with additional incentive programs 409. As recited in original claims 9 and 23, a product date code may be another attribute or characteristic associated with an additional incentive program 409 which may be used to compute the incentive.

Based on the foregoing, it is respectfully submitted that claims 4-9 and 18-23 are fully supported by the specification as originally filed, which includes the original claims.

Accordingly, withdrawal of the rejection under 35 U.S.C. 112, first paragraph, is respectfully requested.

Claims 35 and 42 were rejected under 35 U.S.C. 112, second paragraph, as omitting essential steps, with respect to “paying” the manufacturer a discount. Independent claims 29 and 36, from which claims 35 and 42 respectively depend, have been amended to clarify that the incentive is “distributed” to the manufacturer, and thus is not necessarily monetary. Support for this amendment includes the description set forth at page 6, lines 10-13 of the specification which states that “the incentive distribution module may distribute the incentive 223 due to the manufacturer 501. While the incentive may be monetary, other incentives, including, but not limited to . . . discounts . . . may be utilized.”

It is respectfully submitted that the amendment to the independent claims overcomes the rejection under 35 U.S.C. 112, second paragraph. Accordingly, withdrawal of the rejection is respectfully requested.

#### **Rejection Under 35 U.S.C. § 102**

Claims 1, 10-15, 24-29, and 35 were rejected under 35 U.S.C. 102(a) as being anticipated by Sullivan (US 2001/00118665 A1). This rejection is respectfully traversed.

Turning first to amended independent claim 1, it recites a method comprising storing in computer storage information on a product for sale, including an identification of the manufacturer of the product; determining the product was purchased in a transaction between a purchaser and a seller; and determining whether the manufacturer is the seller of the purchased product. The method further includes identifying by the computer a computer incentive program to apply to the purchased product, calculating by the computer a manufacturer incentive to the manufacturer using the identified incentive program, and distributing the incentive to the manufacturer only if the manufacturer was not the seller in the transaction. Sullivan does not teach or disclose all of these elements.

Specifically, Sullivan is directed towards promotions applicable to products sold by a retailer to a consumer. When a manufacturer’s product is sold by a retailer, Sullivan’s method determines whether a promotion is applicable to the sold product. To settle the account with the manufacturer, Sullivan’s method uses the terms of the promotion to

calculate the amount of money that the retailer owes the manufacturer or that the manufacturer owes to the retailer for the promotion. In all cases in Sullivan, the retailer is the seller of the manufacturer's product and the disclosed method facilitates calculating incentives owed to purchasers based on promotions applicable to the purchased products, and amounts owed to or by the manufacturer based on promotions applicable to the purchased products.

Thus, Sullivan's method is not applicable to situations in which the manufacturer itself is the seller of the product and, thus, does not disclose, or even contemplate, determining whether the manufacturer itself was the seller of the purchased product. In other words, Sullivan does not disclose and is not at all concerned with a method in which distribution of a manufacturer incentive to the manufacturer is based on the determination of whether the manufacturer was the seller and wherein the manufacturer receives an incentive *only* if the manufacturer also was not the seller of the purchased item, as recited in claim 1. Rather, Sullivan distributes payments to the manufacturers based only on the type of promotion applicable to the product.

Based on the foregoing, it is respectfully submitted that elements recited in claim 1 are missing from Sullivan. Accordingly, withdrawal of the rejection of claim 1 under 35 U.S.C. 102(a) is respectfully requested.

Turning next to independent claim 15, it has been amended to recite a method comprising listing in computer storage products that are for sale, the seller of the products, and the manufacturer of the products. The method further comprises determining by the computer whether the seller of a purchased product is the manufacturer of the purchased product. The method also comprises identifying a computer incentive program to apply to the purchased product, calculating a manufacturer incentive to the manufacturer using the identified program, and distributing the incentive to the manufacturer only if the manufacturer was not the seller in the transaction.

For the reasons discussed above with respect to claim 1, Sullivan does not teach all of the elements recited in claim 15. Specifically, Sullivan's method does not include determining whether the seller is also the manufacturer of the purchased product or distributing an incentive to the manufacturer only if the manufacturer was not the seller.

Accordingly, withdrawal of the rejection of claim 15 under 35 U.S.C. 102(a) is respectfully requested.

Independent claim 29 has been amended to recite a computer system for tracking transactions of goods between parties that are not themselves the manufacturer of the goods, calculating incentives to be paid to the manufacturer based on those transactions, and distributing incentives to the manufacturer based on the manufacturer not being the seller of the goods.

As discussed above, Sullivan does not teach or disclose a system in which incentives are distributed to a manufacturer based on the manufacturer *not* being the seller of the goods, as recited in claim 29. Accordingly, withdrawal of the rejection of claim 29 under 35 U.S.C. 102(a) is requested.

Independent claim 36 has been amended in a manner similar to that of claim 15 and thus is believed to be patentably distinguishable over Sullivan for the same reasons discussed above. Accordingly, withdrawal of the rejection of claim 36 is also requested.

The claims which depend from claims 1, 15, 29 and 36 are patentable over Sullivan for at least the same reasons discussed above with respect to each of their base claims, and withdrawal of the rejection of the dependent claims is respectfully requested for those reasons.

The dependent claims are also believed patentable over Sullivan because of the additional unique limitations recited in each of the dependent claims. For instance, with respect to claim 11, it requires selecting one of a plurality of incentive programs having a priority for calculating the incentive. Claim 24 requires a plurality of incentive program, each of which has a priority, and claim 25 requires determining the incentive program having the highest priority.

The Office action refers to paragraph [0087] of Sullivan as teaching a priority system that determines which incentive program to apply. It is respectfully submitted that this passage discloses only that a plurality of different types of promotions are possible. If a purchased product is part of an active promotion, then the terms of the promotion are applied to the product. However, neither paragraph [0087] nor any other passage of Sullivan discloses promotions having priorities or determining which of a plurality of

promotions to apply based on a priority, as variously required by claims 11, 24 and 25. As such, withdrawal of the rejection of the claims 11, 24 and 25 for these additional reasons also is requested.

**Rejection Under 35 U.S.C. § 103**

Claims 2-9, 16-23, 32, 34, 35, 37, 39, 41 and 42 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan. This rejection is respectfully traversed.

Claims 2-9 depend from independent claim 1; claims 16-23 depend from independent claim 15; claims 32, 34 and 35 depend from independent claim 29; and claims 37, 39, 41 and 42 depend from independent claim 36. The patentability of each of independent claims 1, 15, 29, and 36, and their dependent claims, in view of Sullivan's deficiencies has been discussed above. In addition, a suggestion or motivation to modify Sullivan to compensate for the deficiencies discussed above to obtain the inventions recited in claims 1, 15 and 36, and their dependent claims, has not been shown as Sullivan's method does not contemplate determining whether to pay an incentive to a manufacturer based on whether the manufacturer is also the seller. Accordingly, a *prima facie* case of obviousness in view of Sullivan has not been established and withdrawal of the rejection of claims 2-9, 16-23, 37, 39, 41 and 42 under 35 U.S.C. 103(a) is respectfully requested.

Claims 31, 33, 38, and 40 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan in view of Woolston (U.S. 5,845,265). This rejection is respectfully traversed.

Claims 31 and 33 depend from independent claim 29, and claims 38 and 40 depend from independent claim 36. The deficiencies of Sullivan with respect to claims 29 and 36 have been discussed above. Woolston does not compensate for those deficiencies. Specifically, Woolston does not teach or suggest a method that includes determining whether the seller of a product in a transaction is the manufacturer of the product (claim 36), distributing a manufacturer incentive to the manufacturer only if the manufacturer is not the seller (claim 36), or distributing incentives to the manufacture based on the manufacturer not being the seller of the goods (claim 29). Indeed, a determination of

whether the seller is the manufacturer is irrelevant to the consignment system disclosed in Woolston. As such, a motivation or suggestion to modify Sullivan with the teachings of Woolston in a manner that would result in the method recited in claims 31, 33, 38 and 40 cannot be shown.

Because Sullivan in any hypothetical combination with Woolston does not teach, disclose or suggest all of the limitations recited in claims 31, 33, 38 and 40 and because the requisite motivation to modify Sullivan with Woolston is lacking, it is respectfully submitted that a *prima facie* case of obviousness has not been established. Accordingly, withdrawal of the rejection of claims 31, 33, 38 and 40 under 35 U.S.C. 103(a) is respectfully requested.

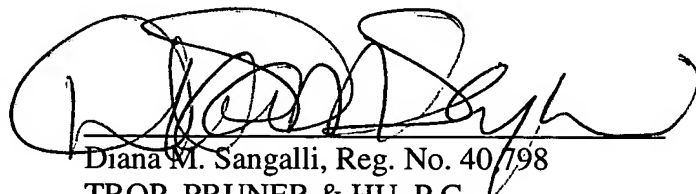
### Conclusion

For the reasons specified above, claims 1-42 are believed to be allowable over the cited references and in condition for allowance. Accordingly, the examiner is respectfully requested to issue a Notice of Allowance. Should the examiner feel that a telephonic interview would speed this application towards issuance, the examiner is requested to call the undersigned attorney at the telephone number provided below.

The Commissioner is authorized to charge any additional fees, including extension of time fees, or credit any overpayment to Deposit Account No. 20-1504 (BLU.0002US).

Respectfully submitted,

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